

HOUSE BILL 4261

By Naifeh

AN ACT to create the Brownsville Energy Authority and to amend Chapter 124 of the Private Acts of 1994; as amended by Chapter 33 of the Private Acts of 2007; and any other acts amendatory thereto, relative to the charter of the City of Brownsville, Tennessee.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Brownsville Energy Authority Act".

SECTION 2. As used in this act, unless the context clearly requires otherwise:

- (1) "Acquire" means to construct or to acquire by purchase, lease, lease-purchase, devise, gift, exercise of the power of eminent domain, or exercise of any other mode of acquisition;
- (2) "Authority" means the Brownsville Energy Authority created by this act;
- (3) "Board" means the board of directors of the authority;
- (4) "Bonds" means bonds, interim certificates, notes, debentures, lease-purchase agreements, and all other evidences of indebtedness either issued by or the payment of which has been assumed by the authority;
- (5) "City" or "City of Brownsville" means the city of Brownsville, Tennessee;
- (6) "City bonds" means bonds of the city of Brownsville issued to finance or refinance any of the systems, as more fully described in Section 11(c) hereof;
- (7) "City board" means the legislative body of the city of Brownsville;
- (8) "Dispose" means to sell, lease, convey, or otherwise transfer any property or any interest in property of the authority;

(9) "Electric service" means the furnishing of electric power and energy for lighting, heating, power, or any other purpose for which electric power and energy can be used;

(10) "Energy" means any and all forms of energy no matter how or where generated or produced;

(11) "Federal agency" means the United States of America, the president of the United States of America, the Tennessee Valley Authority, and any other authority, agency, instrumentality, or corporation of the United States of America heretofore or hereafter created by or pursuant to any act or acts of the Congress of the United States;

(12) "Gas service" means the furnishing of various types of gas and related energy for heating, processing, lighting and any other purpose for which gas and its related products can be used;

(13) "Improve" means to construct, reconstruct, improve, repair, extend, enlarge, or alter.

(14) "Improvement" means any improvement, extension, betterment, or addition to any System;

(15) "Municipality" means any county or incorporated city or town within or outside the State;

(16) "Person" means any natural person, firm, association, corporation, limited liability company, business trust, partnership or governmental entity.

(17) "Refunding bonds" means bonds of the authority issued to refund all or any part of bonds of the authority or the city bonds, as more fully described in Section 11(b) and (c) hereof;

(18) "State" means the state of Tennessee;

(19) "System" means any plant, works, system, facility, property, or parts thereof, together with all appurtenances thereto, used or useful in connection with the furnishing of any of the services and commodities authorized to be provided herein, including generation or production facilities, transmission facilities, storage facilities, distribution and collection facilities, and all real and personal property of every nature

comprising part of or used or useful in connection with the foregoing, and all appurtenances, contracts, leases, franchises and other intangibles relating to the foregoing;

(20) "Wastewater service" means the collection, transportation and treatment of water discharged from residential, commercial, industrial or other processes for final discharge to the environment; and

(21) "Water service" means the procurement, treatment, and distribution of water for domestic use or any other purpose for which water can be used.

SECTION 3. A governmental authority, to be known as the Brownsville Energy Authority, is hereby created and constituted. The authority shall be a public corporation in perpetuity under the corporate name of the Brownsville Energy Authority, and shall under that name be a political subdivision of the state and a body politic and corporate. The authority is created for the purpose of planning, acquiring, constructing, improving, furnishing, equipping, financing, owning, operating, and maintaining water, wastewater, gas and electric utility systems within or outside the corporate limits of the city of Brownsville, and such other utility systems as a municipal water, wastewater, gas or electric utility is authorized by the general laws of the state of Tennessee to own or operate.

SECTION 4. The authority shall have the power and is authorized, effective immediately upon the effective date of this act, either singly or jointly with one or more persons, municipalities, or federal agencies, or with the state, or with one or more agencies or instrumentalities of the state or any municipality:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, construct, improve, furnish, equip, finance, own, operate and maintain, within or outside the corporate limits of the city of Brownsville, a system for the furnishing of water service and to provide water service to any person, governmental entity, or other user or consumer of water services within or outside the city of Brownsville; provided, the system shall be operated as a separate system independent of and separate from the other utility systems of the authority; and provided, further, the

authority shall not exercise any of the powers granted in this subsection wholly or partly within the legal boundaries of an incorporated city or town or a utility district incorporated pursuant to the Utility District Act of 1937, as amended, or any other municipal entity, except as allowed by law, without the consent of the governing body of such city, town, utility district, or municipal entity;

(4) To acquire, construct, improve, furnish, equip, finance, own, operate and maintain within or outside the corporate limits of the city of Brownsville, a system for providing wastewater service to any person, governmental entity, or other user or consumer of wastewater services within and outside the city of Brownsville; provided, the system shall be operated as a separate system independent of, and separate from, the other utility systems of the authority; and provided, further, the authority shall not exercise any of the powers granted in this subsection wholly or partly within the legal boundaries of an incorporated city or town or a utility district incorporated pursuant to the Utility District Act of 1937, as amended, or any other municipal entity, except as allowed by law, without the consent of the governing body of such city, town, utility district, or municipal entity;

(5) To acquire, construct, improve, furnish, equip, finance, own, operate and maintain within or outside the corporate limits of the city of Brownsville, a system for the furnishing of gas and related products and to provide gas service to any person, governmental entity, or other user or consumer of gas services within or outside the city of Brownsville; provided, the system shall be operated as a separate system independent of, and separate from, the other utility systems of the authority; and provided, further, the authority shall not exercise any of the powers granted in this subsection wholly or partly within the legal boundaries of an incorporated city or town or a utility district incorporated pursuant to the Utility District Act of 1937, as amended, or any other municipal entity, except as allowed by law, without the consent of the governing body of such city, town, utility district, or municipal entity;

(6) To acquire, construct, improve, furnish, equip, finance, own, operate and maintain within or outside the corporate limits of the city of Brownsville, a system for the

furnishing of electric service and to provide electric service to any person, governmental entity, or other user or consumer of electric services within or outside the city of Brownsville; provided, the system shall be operated as a separate system independent of, and separate from, the other utility systems of the authority; and provided, further, the authority shall not exercise any of the powers granted in this subsection wholly or partly within the legal boundaries of an incorporated city or town or electric cooperative, except as allowed by law, without the consent of the governing body of such city, town or cooperative;

(7) To fix, levy, charge and collect such fees, rents, tolls or other charges for the use of, or in connection with, any system of the authority as shall be consistent with the provision of the services or sale or other disposition of the commodities provided by the various utilities authorized herein at reasonable cost based on sound economy, public good, and prudent business operations, which fees, rents, tolls or charges shall be established by the board without the necessity of review or approval by any other municipality, the state, or any commission or authority thereof or any federal agency other than as provided in appropriate federal statutes or contracts or as hereinafter provided in this subsection (7); provided, however, that a copy of the schedule of the current rates and charges in effect from time to time shall be kept on public file at the main office of the authority.

The following rate changes shall be submitted to the City board for review but shall not require the approval of the City board:

- (A) Changes resulting from a TVA fuel cost adjustment or any other change in TVA charges;
- (B) Changes in propane rates; and
- (C) Changes in natural gas rates as a result of purchased gas adjustments.

Except as indicated in the immediately preceding paragraph, no base rate change shall be effective for electric, gas, water, sewer, or propane without the approval of the City board. If the City board has not approved such rate change within sixty (60) days after

such proposed change has been submitted to the City board by the authority, a committee consisting of three persons acceptable to a majority of the City board and to a majority of the board of directors of the authority shall determine whether the rate change should be approved, and unless such a committee is appointed and such committee approves the rate change, such rate change will not become effective;

(8) To acquire, hold, own and dispose of property, real and personal, tangible and intangible, or interests therein, in its own name, subject to mortgages or other liens or otherwise and to pay therefore in cash or on credit through installment payments, and to secure the payment of all or any part of any installment obligations in connection with any acquisition;

(9) To have complete control and supervision of any system of the authority and to make such rules and regulations governing the rendering of service thereby as may be just and equitable;

(10) To contract debts, borrow money, issue bonds, and enter into lease-purchase agreements to acquire, construct, improve, furnish, equip, extend, operate or maintain any system or systems, or any part thereof, or to provide the authority's share of the funding for any joint undertaking or project, and to assume and agree to pay any indebtedness incurred for any of the foregoing purposes;

(11) To accept gifts or grants of money or property, real or personal, and voluntary and uncompensated services or other financial assistance from any person, state agency, federal agency, or municipality, for, or in aid of, the acquisition or improvement of any system;

(12) To condemn either the fee or such right, title, interest, or easement in property as the board may deem necessary for any of the purposes mentioned in this act, and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations, or persons having the power of eminent domain, or otherwise held or used for public purposes, and such power of condemnation may be exercised in the mode or method of procedure prescribed by Tennessee Code Annotated, Title 29, Chapter 16, as amended or

changed, or in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain; provided, however, that where title to any property sought to be condemned is defective, it shall be passed by decree of court; provided, further, that where condemnation proceedings become necessary the court in which such proceedings are filed shall, upon application by the authority and upon the posting of a bond with the clerk of the court in such amount as the court may deem commensurate with the value of the property, order that the right of possession shall issue immediately or as soon and upon such terms as the court, in its discretion, may deem proper and just;

(13) To make and execute any and all contracts and instruments necessary or convenient for the full exercise of the powers herein granted, and in connection therewith to stipulate and agree to such covenants, terms and conditions and such term or duration as shall be appropriate, including, but without limitation, contracts for the purchase or sale of any of the commodities or services authorized herein to be provided by the authority, and carry out and perform the covenants, terms and conditions of all such contracts and instruments. In connection with any contract to acquire or sell any of the commodities or services authorized herein, the authority may enter into commodity price exchange or swap agreements, agreements establishing price floors or ceilings, or both, or other price hedging contracts with any person or entity under such terms and conditions as the authority may determine, including, without limitation, provisions permitting the authority to indemnify or otherwise pay any person or entity for any loss of benefits under such agreement upon early termination thereof or default thereunder. When entering into any such contract or arrangement or any such swap, exchange or hedging agreement evidencing a transaction bearing a reasonable relationship to this state and also to another state or nation, the authority may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation; provided, that jurisdiction over the authority shall lie solely in the courts of Haywood County, Tennessee;

(14) To sell, exchange or interchange any of the commodities or services authorized to be provided herein either within or outside the state and to establish prices to be paid for such commodities or services and establish pricing structures with respect thereto, including provision for price rebates, discounts, and dividends; and, in connection with any such sales, exchanges or interchanges, to act as agent for such consumers, to secure contracts and arrangements with other entities or persons, to make contracts for the sale, exchange, interchange, pooling, transmission, distribution, or storage of any of the commodities or services authorized to be provided herein, inside or outside this state, and to transmit, transport and distribute any such commodities or services both for itself and on behalf of others;

(15) To make contracts and execute instruments containing such covenants, terms, and conditions as may be necessary, proper or advisable for the purpose of obtaining loans from any source, or grants, loans or other financial assistance from the state or any federal agency, and to carry out and perform the covenants and terms and conditions of all such contracts and instruments;

(16) To enter on any lands, waters, and premises for the purpose of making surveys, soundings, and examinations in connection with the acquisition, improvement, operation, or maintenance of any system and the furnishing of any of the services herein;

(17) To provide to any municipality, person, federal agency, the state or any agency or instrumentality thereof, transportation and storage capacity for any of the commodities or services authorized herein, and management and purchasing services associated therewith;

(18) To employ, engage, retain and pay compensation to such officers, agents, consultants, professionals and employees of the authority as shall be necessary to operate the systems, manage the affairs of the authority and otherwise further the purposes of the authority and the exercise of the powers thereof, and to fix their compensation and to establish a program of employee benefits, including a retirement system;

(19) To establish a retirement system for all employees of the authority and to maintain all rights and benefits of employees as they existed under the retirement system of the Brownsville Utility Department without diminution and to participate in the Tennessee Consolidated Retirement System in accordance with Tennessee Code Annotated, Title 8, Chapter 35, Part 2;

(20) To enter into joint ventures and cooperative arrangements with one or more persons, including the formation of a partnership, limited liability company or not-for-profit corporation to accomplish any of the purposes set forth herein or to exercise any of the powers set forth herein;

(21) Immediately upon the effective date of this act, to commence operating the systems and to exercise exclusive control and direction of the systems and, upon proper action by the city, to accept title to the assets and assume the liabilities of the systems;

(22) To do business under one or more trade names, including "Brownsville Utilities Department", "Brownsville Utilities Board" and "BUD";

(23) To manage and operate utility systems owned by other persons and entities;

(24) To enter into mutual aid agreements with other utility systems; and

(25) To do any and all acts and things herein authorized or necessary or convenient to carry out the powers expressly given in this act under, through or by means of its own officers, agents, and employees, or by contracts with any person, federal agency, or municipality.

SECTION 5. Each system of the authority shall operate independently of the others and shall be self-sustaining, except insofar as the board may by resolution combine any of the systems which in the opinion of the board shall be advisable and economical and which by the general laws of the state or any federal laws or any contracts or indentures are not required to be operated separately.

SECTION 6.

(a) The affairs of the authority and the exercise of the powers of the authority shall be vested in the board of directors. The following powers shall be exercised directly by the board:

(1) Selection and employment of the general manager who shall serve as the chief executive officer of the authority, who shall serve at the pleasure of the board and whose compensation shall be set by the board. All other officers and employees of the authority shall be selected, employed and discharged pursuant to procedures approved by the general manager;

(2) Issuance of bonds of the authority and the encumbering of assets of the authority, to the extent authorized herein, to secure any such bonds;

(3) Approval of rates of each of the systems;

(4) Approval of the annual budget of each of the systems;

(5) Adoption of by-laws for the conduct of the business of the board;

(6) Selection of a certified public accountant or accountants to perform audits of the books and affairs of the authority;

(7) Selection of engineers and attorneys to perform services for the authority; and

(8) Adoption of a purchasing policy for the authority as hereinafter provided and the approval of purchases and disposition of property in accordance with the terms thereof.

(b) All other powers of the authority shall be exercised by the general manager of the authority and the officers, agents and employees of the authority, unless the board, acting by resolution, shall revoke the delegation of any such powers.

SECTION 7.

(a) The board of directors of the authority shall consist of three (3) directors who shall be appointed as hereinafter provided in this Section 7. The initial board of directors shall be composed of the members of the board of utility commissioners of the Brownsville Utility Department, who shall serve as directors for the unexpired terms of their appointment to the board of utility commissioners, and who shall take office and

begin exercising the powers herein granted immediately upon the effective date hereof. All subsequent appointments shall be for four (4) year terms. Each term of office shall commence on January 1 and end on December 31 of the fourth full year of the term.

Not later than December 1 prior to the expiration of the term of office of any director, the board of directors shall appoint, subject to the approval of the city board, a person (who may be the director whose term is expiring) to fill the vacancy created by an expiring term. In the event the city board does not approve the person thus appointed by the board of directors, the board of directors shall appoint some other person, subject to the approval of the city board. The term of office of any director thus appointed and approved by the city board shall be effective on the immediately following January 1.

If any member of the board of directors shall die, resign or be removed, the board of directors shall appoint, subject to the approval of the city board, a person to fill the vacancy thus created. In the event the city board does not approve the person that is appointed by the board of directors, the board of directors shall appoint some other person subject to approval of the city board. The term of any director thus appointed and approved by the city board shall be effective immediately upon approval by the city board and to be for the then unexpired term of the member who died, resigned or was removed.

Except as provided in Section 8 hereof, each director shall hold office until his successor is appointed, approved and qualified and each director shall be eligible for reappointment.

(b) Immediately upon their qualification as a board, and in January of each subsequent year, the board of directors shall select from the board's membership a chairman and a vice-chairman. No additional compensation shall be paid to a director for serving as chairman or vice-chairman. The board shall have a recording secretary, who need not be a member of the board and who shall be appointed by the general manager, subject to the approval by the board. The recording secretary shall record all minutes of the board, keep and maintain all books and records of the board and perform such other duties as the general manager shall determine.

(c) The board shall hold regular monthly meetings and special meetings as may be necessary for the transaction of the business of the authority. Special meetings of the board may be called by the chairman or, in the absence or disability of the chairman, by any board member. No meeting of the board shall be held unless a majority of the directors are present. All acts of the board shall be by a vote of two (2) or more directors. Resolutions of the board shall be effective upon adoption after one (1) reading and may be adopted at the same meeting at which they are introduced. The time and place of all meetings will be set by the board. The compensation of directors for serving on the board shall be in an amount fixed by resolution of the board, but shall not exceed the compensation permitted to be paid to members of a board of public utilities under Section 7-52-110 from time to time in effect.

Each director shall be a resident of the City and shall be at least thirty (30) years of age.

SECTION 8. Any director may be removed from office for cause upon a vote of two-thirds (2/3) of the members of the board of directors of the authority and a vote of two-thirds (2/3) of the members of the city board of the city of Brownsville, but only after preferment of formal charges by resolution of a majority of the members of the board of directors of the authority.

SECTION 9.

(a) The board shall appoint a general manager, as provided in Section 6, who shall be chief executive officer of the authority and who shall be qualified by training and experience for the general management of the acquisition, improvement and operation of the business and affairs of the authority. The salary of the general manager shall be fixed by the board. The general manager shall serve at the pleasure of the board.

(b) Within the limits of the funds available therefor and subject to exercise by the board of the powers reserved to it pursuant to Section 6 hereof, all powers of the authority granted herein shall be exercised by the general manager and the various officers and employees of the authority.

(c) The general manager shall have charge of the management and operation of the systems and the enforcement and execution of all rules, regulations, programs, plans and decisions made or adopted by the board.

(d) The general manager shall appoint all personnel of the authority, all of whom shall serve at the pleasure of the general manager, and the general manager shall be responsible for maintaining an adequate work force for the authority and establishing a compensation structure for the work force.

(e) Subject to the terms of Section 10 hereof, the general manager is authorized to acquire and dispose of all property, real and personal, necessary to effectuate the purposes of this part. The title of such property shall be taken in the name of the authority.

(f) All contracts, agreements, indentures, trust agreements and other instruments necessary or proper in carrying out the purposes and powers of the authority or in conducting the affairs of the authority or in operating the systems of the authority shall be executed by the general manager, or his designee or designees, the signature thereof to be binding upon the authority; provided, however, the execution by the general manager of any such contract, agreement, indenture, trust agreement or instrument implementing or evidencing the exercise of powers reserved to the board pursuant to Section 6 hereof shall first be approved by resolution of the board.

(g) The general manager shall cause to be kept full and proper books and records of all operations and affairs of the authority and shall cause to be kept separate books and accounts for each system, so that these books and accounts will reflect the financial condition of each division separately, and may require that the moneys and securities of each division be placed in separate funds to the end that each division shall be self-sustaining. All divisions will be audited annually by an independent certified public accountant selected by the board of directors.

SECTION 10. The board shall adopt a policy governing all purchases of services or property, whether real or personal, all leases and lease-purchases and the disposition of all property of the authority. The policy shall authorize the general manager, or his designee or

designees, to enter into contracts and agreements for the purchase of services or property, real or personal, leases and lease-purchases, disposition of property of the authority with a value not exceeding an amount from time to time established by the board, and providing for board approval for such purchases, leases, lease-purchases and dispositions in excess of such amount. Subject to the terms of the purchasing policy relating to board approval, the general manager, or his designee or designees, on behalf of the authority, shall be authorized to execute all contracts, purchase orders and other documents necessary or proper in connection with the purchase of property or services and the disposition of property of the authority, including deeds of conveyance of real property. The policy authorized by this section shall provide for competitive bidding in appropriate circumstances, exceptions to any competitive bidding requirements when competitive bidding is not practical, procedures for the purchase of commodities such as natural gas and other energy sources traded in public markets, procedures for documentation of compliance with purchasing procedures and such other provisions and terms as the board deems necessary or desirable.

SECTION 11.

(a) The authority shall have power and is authorized to issue its bonds for the construction, acquisition, reconstruction, improvement, betterment or extension of any system of the authority or to assume and to agree to pay any indebtedness incurred for any of the foregoing purposes. The proceeds of the sale of any bonds may be applied to:

(1) The payment of the costs of such construction, acquisition, reconstruction, improvement, betterment or extension;

(2) The payment of the costs associated with any such construction, acquisition, reconstruction, improvement, betterment or extension, including engineering, architectural, inspection, legal and accounting expenses;

(3) The payment of the costs of issuance of such bonds, including underwriter's discount, financial advisory fee, preparation of the definitive bonds, preparation of all public offering and marketing materials, advertising, credit enhancement, and legal, accounting, fiscal and other similar expenses;

(4) The payment of interest during the period of construction and for six (6) months thereafter on any money borrowed or estimated to be borrowed;

(5) Reimbursement of the authority for moneys previously spent by the authority for any of the foregoing purposes;

(6) The establishment of reasonable reserves for the payment of debt service on such bonds, or for repair and replacement to the system of the authority for whose benefit the financing is being undertaken, or for such other purposes as the board shall deem necessary and proper in connection with the issuance of any bonds and operation of the system for whose benefit the financing is being undertaken;

(7) The contribution of the authority's share of the funding for any joint undertaking for the purposes hereinabove set forth; and

(8) The contribution by the authority to any subsidiary or separate entity controlled by the authority for the purposes hereinabove set forth.

(b) The authority shall have the power and is hereby authorized to issue its bonds to refund and refinance outstanding bonds of the authority heretofore or hereafter issued or lawfully assumed by the authority. The proceeds of the sale of the bonds may be applied to:

(1) The payment of the principal amount of the bonds being refunded and refinanced;

(2) The payment of the redemption premium thereon, if any;

(3) The payment of unpaid interest on the bonds being refunded, including interest in arrears, for the payment of which sufficient funds are not available, to the date of delivery or exchange of the refunding bonds;

(4) The payment of interest on the bonds being refunded and refinanced from the date of delivery of the refunding bonds to maturity or to, and including, the first or any subsequent available redemption date or dates on which the bonds being refunded may be called for redemption;

(5) The payment of the costs of issuance of the refunding bonds, including underwriter's discount, financial advisory fee, preparation of the definitive bonds, preparation of all public offering and marketing materials, advertising, credit enhancement, and legal, accounting, fiscal and other similar expenses, and the costs of refunding the outstanding bonds, including the costs of establishing an escrow for the retirement of the outstanding bonds, trustee and escrow agent fees in connection with any escrow, and accounting, legal and other professional fees in connection therewith; and

(6) The establishment of reasonable reserves for the payment of debt service on the refunding bonds, or for repair and replacement to the system of the authority for whose benefit the financing is being undertaken, or for such other purposes as shall be deemed necessary and proper in connection with the issuance of the refunding bonds and operation of the system for whose benefit the financing is being undertaken. Refunding bonds may be issued to refinance and refund more than one issue of outstanding bonds, notwithstanding that such outstanding bonds may have been issued at different times. Refunding bonds may be issued jointly with other refunding bonds or other bonds of the authority. The principal proceeds from the sale of refunding bonds may be applied either to the immediate payment and retirement of the bonds being refunded or, to the extent not required for the immediate payment of the bonds being refunded, to the deposit in escrow with a bank or trust company to provide for the payment and retirement at a later date of the bonds being refunded.

(c) The authority shall have the power and is authorized to issue its bonds to retire all bonds of the city of Brownsville issued to finance or refinance any of the systems, and, to the extent permitted by contracts with any of the owners of the city bonds, to assume and agree to pay when due the city bonds, retire the city bonds, or deposit in escrow funds sufficient, together with earnings thereon, to retire the city bonds at maturity or upon redemption.

(d) The authority shall have the power and is hereby authorized to issue bonds in anticipation of the collection of revenues from the system for whose benefit the financing is undertaken for the purpose of financing electrical power or gas purchases, including storage costs and pipeline capacity costs. Any such bonds shall be secured solely by a pledge of, and lien on, the revenues of the system for whose benefit the financing is undertaken. The principal amount of bonds which may be issued during any twelve (12) month period shall not exceed sixty percent (60%) of total electrical power or gas purchases for the same period, and all notes issued during such period shall be retired and paid in full on, or before, the end of such period. The notes shall be sold in such manner, at such price and upon such terms and conditions as may be determined by the board. No notes shall be issued under this subsection unless the electric system or gas system, as applicable, has positive retained earnings as shown in the most recent audited financial statements of the system, and the system has produced positive net income in at least one (1) fiscal year out of the three (3) fiscal years next preceding the issuance of the bonds as shown on the audited financial statements of the system. No bonds issued under this subsection shall be issued without first being approved by the state director of local finance in accordance with the Local Government Public Obligations Act, compiled in Tennessee Code Annotated, Title 9, Chapter 21. If revenues of such system are insufficient to pay all such bonds at maturity, any unpaid bonds may be renewed one (1) time for a period not to exceed one (1) year or otherwise liquidated as approved by the comptroller of the treasury or the director of the division of local finance.

(e) Bonds issued hereunder as a part of an issue the last maturity of which is not later than five (5) years following the date of issue shall be issued, and referred to, as notes.

SECTION 12.

(a) No bonds shall be issued or assumed hereunder unless authorized to be issued or assumed by resolution of the board, which resolution may be adopted at the same meeting at which it is introduced by a majority of all members thereof then in

office, and shall take effect immediately upon adoption. Bonds authorized to be issued hereunder may be issued in one (1) or more series, may bear such date or dates, mature at such time or times, not exceeding forty (40) years from their respective dates, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Bonds may be issued for money or property at competitive or negotiated sale for such price or prices as the board, or its designee, shall determine.

(b) Bonds may be repurchased by the authority out of any available funds at a price not to exceed the principal amount thereof and accrued interest, and all bonds so repurchased shall be cancelled or held as an investment of the authority as the board may determine.

(c) Pending the preparation or execution of definitive bonds, interim receipts or certificates or temporary bonds may be delivered to the purchasers of bonds.

(d)

(1) With respect to all or any portion of any issue of bonds issued hereunder, at any time during the term of the bonds, and upon receipt of a report of the comptroller of the treasury or the comptroller's designee finding that the contracts and agreements authorized in this subsection are in compliance with the guidelines, rules or regulations adopted or promulgated by the state funding board, as set forth in Tennessee Code Annotated, Section 7-34-109(h), the authority, by resolution of the board, may authorize and enter into interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, and other interest rate hedging agreements under such terms and conditions as the board may determine, including, without limitation, provisions permitting the authority to pay to, or receive from, any person or entity any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(2) The authority may enter into an agreement to sell bonds (other than its refunding bonds) under this act providing for delivery of its bonds on a date greater than ninety (90) days and not greater than five (5) years (or such greater period of time if approved by the comptroller of the treasury or the comptroller's designee), from the date of execution of such agreement or to sell its refunding bonds providing for delivery thereof on a date greater than ninety (90) days from the date of execution of the agreement and not greater than the first optional redemption date on which the bonds being refunded can be optionally redeemed resulting in cost savings or at par, whichever is earlier, only upon receipt of a report of the comptroller of the treasury or the comptroller's designee finding that the agreement or contract of the authority to sell its bonds as authorized in this subsection is in compliance with the guidelines, rules or regulations adopted or promulgated by the state funding board in accordance with the provisions of Tennessee Code Annotated, Section 7-34-109(h). Agreements to sell bonds and refunding bonds for delivery ninety (90) days or less from the date of execution of the agreement do not require a report of the comptroller of the treasury or the comptroller's designee.

(3) Prior to the adoption by the board of a resolution authorizing a contract or agreement described in subdivision (1) or (2), a request shall be submitted in accordance with Tennessee Code Annotated, Section 9-21-130, to the comptroller of the treasury or the comptroller's designee for a report finding that such contract or agreement is in compliance with the guidelines, rules or regulations of the state funding board. Within fifteen (15) days of receipt of the request, the comptroller of the treasury or the comptroller's designee shall determine whether the contract or agreement substantially complies with the guidelines, rules or regulations and shall report thereon to the municipality. If the report of the comptroller of the treasury or the comptroller's designee finds that the contract or agreement complies with the guidelines, rules or regulations of the state funding board or the comptroller of the treasury shall fail to report within

the fifteen (15) day period, then the authority may take such action with respect to the proposed contract or agreement as it deems advisable in accordance with the provisions of this section and the guidelines, rules or regulations of the state funding board. If the report of the comptroller of the treasury or the comptroller's designee finds that such contract or agreement is not in compliance with the guidelines, rules or regulations, then the authority is not authorized to enter into such contract or agreement. The guidelines, rules or regulations shall provide for an appeal process upon a determination of noncompliance.

(4) When entering into any contracts or agreements facilitating the issuance and sale of bonds, including contracts or agreements providing for liquidity and credit enhancement and reimbursement agreements relating thereto, interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings or both, other interest rate hedging agreements, and agreements with the purchaser of the bonds, evidencing a transaction bearing a reasonable relationship to this state and also to another state or nation, the authority may agree in the written contract or agreement that the rights and remedies of the parties thereto shall be governed by the laws of this state or the laws of such other state or nation; provided, that jurisdiction over the authority shall lie solely in the courts of Haywood County, Tennessee.

(5) Prior to the adoption or promulgation by the state funding board of guidelines, rules or regulations with respect to the contracts and agreements authorized in subsections (1) and (2), the authority may enter into such contracts or agreements to the extent otherwise authorized by the general laws of the state.

SECTION 13. In order to secure the payment of the principal and interest on the bonds issued hereunder, or in connection with such bonds, the authority has the power to secure such bonds and to covenant as to the bonds as set forth in Tennessee Code Annotated, Section 9-21-305 and Section 7-34-110 as such provisions shall from time-to-time be amended.

SECTION 14. No owner or owners of any bonds issued hereunder shall ever have the right to compel any exercise of the taxing powers of the state, the city of Brownsville, or any other municipality or political subdivision of the state to pay such bonds or the interest thereon. Each bond issued under this act shall recite in substance that such bond, including the interest thereon, is payable solely from the revenues pledged to the payment thereof, and that the bond does not constitute a debt of the state, any municipality or any other political subdivision therein.

SECTION 15. Bonds issued hereunder bearing the signature of the general manager in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefore any or all the persons whose signatures appear thereon shall have ceased to be officers. The validity of any bonds shall not be dependent on, or affected by, the validity or regularity of any proceedings relating to the acquisition or improvement of the system or systems for which such bonds are issued. The resolution or resolutions authorizing bonds may provide that the bonds shall contain a recital that they are issued pursuant to this act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

SECTION 16. In connection with the issuance of bonds and in order to secure the payment of its bonds, the authority shall have power:

- (1) To pledge all or any part of its revenues;
- (2) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to its bonds, to provide for the powers and duties of such trustee or trustees, to limit the liabilities thereof, and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any amount or proportion of them may enforce any such covenant; and
- (3) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or which, in the absolute discretion of the board, tend to make the bonds more marketable notwithstanding that such covenants, acts and things may restrict or interfere with the exercise of the powers herein granted; it being the intention hereof to give the authority

power to do all things in the issuance of bonds, and for their security, that a private business corporation can do under the general laws of the state.

SECTION 17. In addition to all other rights and remedies, any holders of bonds of the authority, including a trustee for bondholders, shall have the right:

(1) By mandamus or other suit, action or proceeding at law or in equity, to enforce the bondholder's rights against the authority and the board of the authority, including the right to require the authority and such board to fix and collect rates and charges adequate to carry out any agreement as to, or pledge of, the revenues produced by such rates or charges, and to require the authority and such board to carry out any other covenants and agreements with such bondholders and to perform their duties under this act;

(2) By action or suit in equity to enjoin any acts or things which may be unlawful or a violation of the rights of such holder or holders of bonds;

(3) By suit, action or proceeding in the chancery court of Haywood County to obtain an appointment of a receiver of any system or systems of the authority or any part or parts thereof. If such receiver is appointed, such receiver may enter and take possession of such system or systems or part or parts thereof and operate and maintain same, and collect and receive all fees, rents, tolls or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall dispose of such money in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct; and

(4) By suit, action or proceeding in the chancery court of Haywood County to require the board of the authority to account as if it were the trustee of an express trust.

SECTION 18.

(a) The authority shall not be operated for gain or profit or primarily as a source of revenue to the city of Brownsville or any other person or entity. The authority shall, however, prescribe and collect reasonable rates, fees or charges for the services, facilities and commodities made available by it, and shall revise such rates, fees or charges from time-to-time whenever necessary so that each system, or any combined

systems as authorized herein, shall be and always remain self-supporting, and shall not require appropriations by the city of Brownsville or any other municipality, the state or any political subdivision to carry out its purpose. Any one system of the authority shall not subsidize any other system, unless the systems are operated as a combined system in accordance with the terms hereof, in which case the combined system shall be self-supporting.

(b) The rates, fees, or charges prescribed for each system shall be such as will produce revenue at least sufficient:

- (1) To provide for the payment of all expenses of operation and maintenance of such system;
- (2) To pay when due principal of, and interest on, all bonds of the authority payable from the revenues of such system;
- (3) To pay any payments in lieu of taxes authorized to be paid pursuant to the terms hereof; and
- (4) To establish proper reserves for the system.

SECTION 19. Any pledge of, or lien on, revenues, fees, rents, tolls or other charges received or receivable by the authority to secure the payment of any bonds of the authority, and the interest thereon, shall be valid and binding from the time that the pledge or lien is created or granted and shall inure to the benefit of the owner or owners of any such bonds until the payment in full of the principal thereof and premium and interest thereon. The priority of any pledge or lien with respect to competing pledges or liens shall be determined by the date such pledge or lien is created or granted. Neither the resolution nor any other instrument granting, creating, or giving notice of the pledge or lien need be filed or recorded to preserve or protect the validity or priority of such pledge or lien.

SECTION 20. So long as the authority owns any of the systems, the property and revenue of such system shall be exempt from all state, county and municipal taxation. Any bonds issued by the authority pursuant to the provisions hereof, and the income therefrom, shall be exempt from all state, county and municipal taxation, except inheritance, transfer and estate taxes, and except as otherwise provided by the general laws of the state.

SECTION 21. The authority is authorized to pay or cause to be paid from the revenues of each of the systems for each fiscal year payments in lieu of taxes to the city of Brownsville or such other municipality as shall properly receive said payments; provided, that payments from the electric system revenues shall be made and computed in accordance with the provisions of the Municipal Electric Plant Law of 1935, codified at Tennessee Code Annotated, Title 7, Chapter 52, and payments from the gas system revenues shall be made and computed in accordance with the provisions of the Municipal Gas System Tax Equivalent Law of 1987, codified at Tennessee Code Annotated, Title 7, Chapter 39, Part 4. Payments made from revenues of the water system shall be made by agreement with the affected municipality. The authority shall make payments in lieu of taxes to the city of Brownsville, accruing from and after the effective date hereof, from the gas system revenues and the electric system revenues on the same basis as payments are currently being made by the Brownsville Utility Department.

SECTION 22. The authority shall provide water service, wastewater service, gas service, and electric service to all areas that are hereafter lawfully and properly annexed within the corporate limits of the city of Brownsville. Such services shall be provided as soon as practical after the annexation becomes effective. For purposes of this Section 22, the authority shall have powers granted to the city under general law to provide utility services in annexed areas.

SECTION 23. All moneys of the authority, from whatever source derived, shall be deposited in one (1) or more banks or trust companies and, if the authority shall so require, such accounts shall be continuously insured by an agency of the federal government or secured by a pledge of direct obligations of the United States of America or of the state of Tennessee having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account or accounts. Such securities shall either be deposited with the authority or held by a trustee or agent satisfactory to the authority. In lieu of any pledge of such securities, said deposits may be secured by a surety bond or bonds which shall be in form, sufficiency and substance satisfactory to the authority.

SECTION 24. All funds of the authority are authorized to be invested as follows:

- (1) Direct obligations of the United States government or any of its agencies;

(2) Obligations guaranteed as to principal and interest by the United States government or any of its agencies;

(3) Certificates of deposit and other evidences of deposit at state- and federally-chartered banks, savings and loan institutions or savings banks deposited and collateralized as otherwise required by law;

(4) Repurchase agreements entered into with the United States or its agencies or with any bank, broker-dealer or other such entity so long as the obligation of the obligated party is secured by a perfected pledge of full faith and credit obligations of the United States or its agencies;

(5) Guaranteed investment contracts or similar agreements providing for a specified rate of return over a specified time period with entities rated in one (1) of the two (2) highest rating categories of a nationally recognized rating agency;

(6) The local government investment pool created by Tennessee Code Annotated, Title 9, Chapter 4, Part 7;

(7) Direct general obligations of a state of the United States, or a political subdivision or instrumentality thereof, having general taxing powers and rated in either of the two (2) highest rating categories by a nationally recognized rating agency of such obligations; or

(8) Obligations of any state of the United States or a political subdivision or instrumentality thereof, secured solely by revenues received by, or on behalf of, the state or political subdivision or instrumentality thereof irrevocably pledged to the payment of the principal and interest on such obligations, rated in the two (2) highest rating categories by a nationally recognized rating agency of such obligations.

SECTION 25. In the event that the authority shall cease to exist, all of its assets remaining after all of its obligations and liabilities have been satisfied or discharged shall pass to, and become the property of, the city of Brownsville.

SECTION 26. The authority is and shall be considered a political subdivision for purposes of Tennessee Code Annotated, Title 65, Chapter 4.

SECTION 27. The board shall be considered a governing body for purposes of the Open Meetings Act, codified at Tennessee Code Annotated, Title 8, Chapter 44.

SECTION 28. The authority shall be considered a governmental entity for purposes of the Tennessee Governmental Tort Liability Act, codified at Tennessee Code Annotated, Title 29, Chapter 20.

SECTION 29. The authority shall be considered a public agency for purposes of the Interlocal Cooperation Act, codified at Tennessee Code Annotated, Title 12, Chapter 9.

SECTION 30. The authority shall be considered a municipality for the purposes of the Energy Acquisition Corporation Act, codified at Tennessee Code Annotated, Title 7, Chapter 39, and may be an associated municipality of an energy acquisition corporation under Tennessee Code Annotated, Title 7, Chapter 39 and the board shall be a governing body for purposes of Tennessee Code Annotated, Title 7, Chapter 39.

SECTION 31. The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law.

SECTION 32. This act shall not affect rights and duties that matured, penalties that were incurred or proceedings that were begun before its effective date.

SECTION 33. Chapter 124 of the Private Acts of 1994, and all other acts amendatory thereto, is amended by adding the following language as new sections 44, 45 and 46 and by renumbering current sections 44, 45 and 46 as sections 47, 48 and 49:

Section 44. The city is authorized to transfer to the Brownsville Energy Authority all its right, title and interest in and to all the assets currently operated for the city by the Brownsville Utility Department, including all real and personal property, tangible or intangible, and any right or interest in any such property, whether or not subject to mortgages, liens, charges or other encumbrances, and all appurtenances, contracts, leases, franchises and other intangibles. The transfer shall be authorized by resolution of the Board of Mayor and Aldermen of the city adopted on one (1) reading and shall be accomplished through documents and instruments authorized by said resolution and executed by such officers of the city as shall be designated by said resolution. A transfer to the Brownsville energy authority in accordance with the terms hereof shall not be

deemed a disposition of assets for purposes of Tennessee Code Annotated, Section 7-52-132.

Section 45. The city is hereby authorized, by resolution of the Board of Mayor and Aldermen to grant a franchise to the Brownsville Energy Authority to provide within the corporate limits of the city of Brownsville any and all of the services that it is authorized to provide under applicable law upon such terms and conditions as shall be prescribed by the Board of Mayor and Aldermen.

Section 46. Upon the Brownsville Energy Authority Act, Chapter ____ of the Private Acts of 2008 becoming effective, the jurisdiction and control of the utility systems of the city of Brownsville shall be transferred to the Brownsville Energy Authority, and Brownsville Utility Department and the board of utility commissioners shall cease to exist.

SECTION 34. It shall be a condition of the transfer of the systems from the city of Brownsville to the authority that upon such transfer the authority shall either retire the city bonds by the payment thereof in full upon transfer, defease the city bonds by depositing funds in irrevocable escrow for the payment of these bonds, or assume and agree to pay in full principal of and interest on the city bonds. Upon the assumption by the authority of the city bonds and its agreement to pay those bonds when due, the authority shall be fully obligated to pay when due, principal, premium and interest with respect to those bonds with the same force and effect as if those bonds were issued by the authority. Bonds issued pursuant to this section shall be secured by, and payable from, the revenues of the respective system in the same way as other bonds of the authority issued pursuant to this act. The transfer of each of the systems shall be accomplished in such a manner as not to impair the obligations of contract with reference to the city bonds and other legal obligations of the city of Brownsville and to preserve and protect the contract rights vested in the owners of such bonds and other obligations.

SECTION 35. If any provision of this act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provisions or application, and to that end the provisions of this act are declared to be severable.

SECTION 36. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the city of Brownsville. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified by him to the Secretary of State.

SECTION 37. For purposes of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 36.